

SENATE BILL No. 494

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-24-12-10; IC 12-26-1-0.5; IC 34-30-2-149.5; IC 35-36-2-4; IC 35-39.

Synopsis: Civil commitment of sexual predators. Provides for the commitment of a person found to be a sexually violent predator to a mental health institution for an indefinite period following the person's release from prison after serving a sentence imposed for a sexual offense conviction. Provides for the civil commitment of a person charged with a sexual offense upon a finding of not responsible by reason of insanity. Provides for an annual review and hearing on the person's condition and for the possible release of the person. Requires the commissioner of the department of correction to establish a multidisciplinary team to assess whether a person meets the definition of a sexually violent predator. Requires the attorney general to establish a prosecuting attorney review committee to review the records of each person referred to the review committee. Makes conforming amendments.

Effective: July 1, 2005.

Young R Michael

January 18, 2005, read first time and referred to Committee on Judiciary.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 494

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-24-12-10 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) Upon admission
3 to a state institution administered by the division of mental health and
4 addiction, the gatekeeper is one (1) of the following:

5 (1) For an individual with a psychiatric disorder, the community
6 mental health center that submitted the report to the committing
7 court under IC 12-26.

8 (2) For an individual with a developmental disability, a division
9 of disability, aging, and rehabilitative services service coordinator
10 under IC 12-11-2.1.

11 (3) For an individual entering an addictions program, an
12 addictions treatment provider that is certified by the division of
13 mental health and addiction.

14 (b) The division is the gatekeeper for the following:

15 (1) An individual who is found to have insufficient
16 comprehension to stand trial under IC 35-36-3.

17 (2) An individual who is found to be not guilty by reason of

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insanity under IC 35-36-2-4 and is subject to a civil commitment under IC 12-26 **or IC 35-39.**

(3) An individual who is immediately subject to a civil commitment upon:

(A) the individual's release from incarceration in a facility administered by the department of correction or the Federal Bureau of Prisons; ~~or upon~~

(B) being charged with or convicted of a forcible felony under IC 35-41-1; **or**

(C) **a determination under IC 35-39-8 that the individual is a sexually violent predator.**

(4) An individual placed under the supervision of the division for addictions treatment under IC 12-23-7 and IC 12-23-8.

(5) An individual transferred from the department of correction under IC 11-10-4.

SECTION 2. IC 12-26-1-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. This article does not apply to a person who has been determined to be a sexually violent predator by an agency (as defined in IC 35-39-2-2) and is described in IC 35-39-1-1.**

SECTION 3. IC 34-30-2-149.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 149.5. IC 35-39-4-1 (Concerning persons performing services under the law governing civil commitment of sexually violent predators).**

SECTION 4. IC 35-36-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. **(a) Except as provided in subsection (e),** whenever a defendant is found not responsible by reason of insanity at the time of the crime, the prosecuting attorney shall file a written petition with the court under IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold a commitment hearing under IC 12-26-7.

(b) The hearing shall be conducted at the earliest opportunity after the finding of not responsible by reason of insanity at the time of the crime, and the defendant shall be detained in custody until the completion of the hearing. The court may take judicial notice of evidence introduced during the trial of the defendant and may call the physicians appointed by the court to testify concerning whether the defendant is currently mentally ill and dangerous or currently mentally ill and gravely disabled, as those terms are defined by IC 12-7-2-96 and

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1 IC 12-7-2-130(1). The court may subpoena any other persons with
2 knowledge concerning the issues presented at the hearing.

3 (c) The defendant has all the rights provided by the provisions of
4 IC 12-26 under which the petition against the defendant was filed. The
5 prosecuting attorney may cross-examine the witnesses and present
6 relevant evidence concerning the issues presented at the hearing.

7 (d) If a court orders an individual to be committed under IC 12-26-6
8 or IC 12-26-7 following a verdict of not responsible by reason of
9 insanity at the time of the crime, the superintendent of the facility to
10 which the individual is committed and the attending physician are
11 subject to the requirements of IC 12-26-15-1.

12 (e) **Whenever a defendant is found not responsible by reason of**
13 **insanity at the time of the commission of a sexually violent offense**
14 **(as defined in IC 35-39-2-8), the prosecuting attorney shall give**
15 **written notice regarding the person to the attorney general as**
16 **provided in IC 35-39-3-1. Upon receipt of the notice required by**
17 **this subsection, the attorney general shall initiate proceedings**
18 **under IC 35-39 for the commitment of the defendant.**

19 SECTION 5. IC 35-39 IS ADDED TO THE INDIANA CODE AS
20 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
21 2005]:

22 **ARTICLE 39. CIVIL COMMITMENT OF SEXUALLY**
23 **VIOLENT PREDATORS**

24 **Chapter 1. Applicability**

25 **Sec. 1. IC 12-26 does not apply to a person who has been**
26 **determined to be a sexually violent predator by an agency and is**
27 **the subject of an agency notice under IC 35-39-3-1.**

28 **Chapter 2. Definitions**

29 **Sec. 1. The definitions in this chapter apply throughout this**
30 **article.**

31 **Sec. 2. "Agency" means an agency having custody of a person**
32 **serving a sentence or term of confinement. The term includes the**
33 **department of correction, the division of mental health and**
34 **addiction, and the parole board.**

35 **Sec. 3. "Mental abnormality" means a congenital or an acquired**
36 **condition affecting a person's emotional or volitional capacity that**
37 **predisposes the person to commit sexually violent offenses to a**
38 **degree that makes the person a menace to the health and safety of**
39 **others.**

40 **Sec. 4. "Multidisciplinary team" refers to the multidisciplinary**
41 **team established under IC 35-39-5-1.**

42 **Sec. 5. "Predatory" describes acts directed toward strangers or**

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1 individuals with whom relationships have been established or
2 promoted for the primary purpose of victimization.

3 Sec. 6. "Prosecuting attorney review committee" refers to the
4 prosecuting attorney review committee appointed under
5 IC 35-39-5-2.

6 Sec. 7. "Sexually motivated" means a state in which one (1) of
7 the purposes for which a defendant commits a crime is for the
8 purpose of the defendant's sexual gratification.

9 Sec. 8. "Sexually violent offense" includes any of the following:

- 10 (1) Rape (IC 35-42-4-1).
- 11 (2) Criminal deviate conduct (IC 35-42-4-2).
- 12 (3) Child molesting (IC 35-42-4-3).
- 13 (4) Child exploitation (IC 35-42-4-4(b)).
- 14 (5) Vicarious sexual gratification (IC 35-42-4-5).
- 15 (6) Child solicitation (IC 35-42-4-6).
- 16 (7) Child seduction (IC 35-42-4-7).
- 17 (8) Sexual misconduct with a minor as a Class A or Class B
18 felony (IC 35-42-4-9).
- 19 (9) Incest (IC 35-46-1-3).
- 20 (10) Sexual battery (IC 35-42-4-8).
- 21 (11) Any conviction before July 1, 2005, for a felony that is
22 comparable to an offense listed in subdivisions (1) through
23 (10).
- 24 (12) Any federal or other state conviction for an offense that
25 is substantially similar to an offense listed in subdivisions (1)
26 through (10).
- 27 (13) An attempt to commit (as defined in IC 35-41-5-1) or
28 conspiracy to commit (as defined in IC 35-41-5-2) an offense
29 listed in subdivisions (1) through (12).
- 30 (14) A crime that, either at the time of sentencing for an
31 offense or subsequently during civil commitment proceedings
32 under this article, has been determined beyond a reasonable
33 doubt to have been sexually motivated.

34 Sec. 9. "Sexually violent predator" means a person who:

- 35 (1) has:
 - 36 (A) been convicted of a crime listed in section 8 of this
37 chapter; and
 - 38 (B) a prior unrelated conviction for a crime listed in
39 section 8 of this chapter; and
- 40 (2) suffers from a mental abnormality or personality disorder
41 that makes the person likely to engage in predatory acts of
42 sexual violence if the person is not confined in a secure

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1 facility.

2 **Chapter 3. Notice of Release of a Sexually Violent Predator**

3 **Sec. 1. If an agency makes a determination, based on reasonable**
 4 **cause, that a person is a sexually violent predator, the agency shall**
 5 **give written notice regarding the person to the attorney general**
 6 **and the multidisciplinary team not later than ninety (90) days**
 7 **before any of the following occurs:**

8 (1) The release date for a person who has been convicted of a
 9 sexually violent offense. However, in the case of a person who
 10 is returned to a correctional facility for not more than ninety
 11 (90) days as a result of revocation of postrelease supervision,
 12 written notice shall be given under this subdivision as soon as
 13 is practicable following the person's readmission to a
 14 correctional facility.

15 (2) The release date for a person who has been:

16 (A) charged with a sexually violent offense; and

17 (B) determined to be incompetent to stand trial under
 18 IC 35-36-3.

19 (3) The release date for a person who has been found not
 20 responsible by reason of insanity of a sexually violent offense
 21 under IC 35-36-2-3.

22 (4) The release date for a person who has been found not
 23 guilty of a sexually violent offense under IC 35-36-2-3.

24 **Sec. 2. An agency shall include in the notice required by section**
 25 **1 of this chapter the following:**

26 (1) The name of the person who is the subject of the notice,
 27 identifying factors, anticipated future residence, and offense
 28 history.

29 (2) Documentation of institutional adjustment and treatment
 30 received by the person who is the subject of the notice.

31 **Chapter 4. Immunity From Liability**

32 **Sec. 1. An agency, the employees and officials of an agency, the**
 33 **members of the multidisciplinary team and of the prosecuting**
 34 **attorney review committee appointed under IC 35-39-5, and the**
 35 **individuals contracting, appointed, or volunteering to perform**
 36 **services under this article are immune from liability for good faith**
 37 **conduct under this article.**

38 **Chapter 5. Multidisciplinary Team and Prosecuting Attorney**
 39 **Review Committee**

40 **Sec. 1. (a) The commissioner of the department of correction**
 41 **shall establish a multidisciplinary team that may include**
 42 **individuals from other state agencies to review available records**

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of each person about whom notice is received under IC 35-39-3.

(b) The multidisciplinary team, not later than thirty (30) days after receiving notice under IC 35-39-3, shall assess whether a person is a sexually violent predator. The multidisciplinary team shall notify the attorney general of the multidisciplinary team's assessment.

Sec. 2. (a) The attorney general shall appoint a prosecuting attorney review committee to review the records of each person who is the subject of a written notice under IC 35-39-3-1.

(b) The prosecuting attorney review committee shall assist the attorney general in determining whether a person is a sexually violent predator.

(c) The assessment of the multidisciplinary team that is made under section 1(b) of this chapter must be made available to the attorney general and the prosecuting attorney review committee.

Chapter 6. Determination of Probable Cause; Contents of Petition; Hearing

Sec. 1. If it appears that a confined person may be a sexually violent predator and the prosecuting attorney review committee appointed under IC 35-39-5-2 has determined that the person is a sexually violent predator, the attorney general may file a petition with a court having jurisdiction not later than seventy-five (75) days after the date the attorney general receives written notice under IC 35-39-3-1. The petition must name the confined person as the respondent.

Sec. 2. A petition filed under this chapter must:

- (1) allege that the person named as respondent in the petition is a sexually violent predator; and
- (2) state sufficient facts to support the allegation.

Sec. 3. (a) Upon the filing of a petition under section 1 of this chapter, the court shall determine whether probable cause exists to believe that the person named as respondent in the petition is a sexually violent predator.

(b) If the court determines under subsection (a) that probable cause exists to believe that the person named as respondent in the petition is a sexually violent predator, the court shall order the agency confining the person named as respondent to retain custody of the person.

Sec. 4. (a) A person detained under section 3 of this chapter must be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator.

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(b) Not later than seventy-two (72) hours after an order is entered under section 3 of this chapter, the court shall conduct the probable cause hearing described in subsection (a).

Sec. 5. At the probable cause hearing held under section 4 of this chapter, the court shall:

- (1) verify the detained person's identity; and
- (2) determine whether probable cause exists to believe that the person is a sexually violent predator.

The state may rely upon the petition filed under section 1 of this chapter and may supplement the petition with additional documentary evidence or live testimony.

Sec. 6. At the probable cause hearing held under section 4 of this chapter, the detained person has the following rights in addition to the rights specified in section 4 of this chapter:

- (1) To be represented by counsel.
- (2) To present evidence on the detained person's behalf.
- (3) To cross-examine witnesses who testify against the detained person.
- (4) To view and copy all petitions and reports in the court file.

Sec. 7. If a probable cause determination is made by the court after a hearing held under section 4 of this chapter, the court shall order that the detained person be transferred to an appropriate secure facility, including a county jail, for an evaluation as to whether the detained person is a sexually violent predator. The evaluation must be conducted by an individual whom the court considers professionally qualified to conduct the examination.

Chapter 7. Trial

Sec. 1. (a) Not later than sixty (60) days after the completion of a probable cause hearing held under IC 35-39-6, the court shall conduct a trial to determine whether the person who was the subject of the hearing is a sexually violent predator.

(b) The trial may be continued:

- (1) on the request of either party and a showing of good cause; or
- (2) by the court on its own motion in the due administration of justice;

if the person named as respondent in the trial will not be substantially prejudiced.

Sec. 2. At all stages of the proceedings under this article, a person named as respondent in the trial conducted under section 1 of this chapter is entitled to the assistance of counsel. If the person named as respondent is indigent, the court shall appoint

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counsel to assist the person.

Sec. 3. (a) If a person named as respondent is subjected to an examination under this article, the person named as respondent may retain experts or professional persons to perform an examination on the person's behalf.

(b) If a person named as respondent wishes to be examined by a qualified expert or professional person of the person's own choice, the examining expert or professional is entitled to have reasonable access to the person for the purpose of the examination, as well as to all relevant medical and psychological records and reports.

(c) For a person named as respondent who is indigent, the court, upon the person's request, shall determine whether the services are necessary and determine reasonable compensation for the services. If the court determines that the services are necessary and the expert's or professional person's requested compensation for the services is reasonable, the court shall assist the person in obtaining the expert or professional person to perform an examination or participate in the trial on the person's behalf.

(d) The court shall approve payment for the services obtained under subsection (c) upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the same case or for the same services from any other source.

Sec. 4. The respondent in a trial conducted under section 1 of this chapter, the attorney general, and the court are entitled to demand that the trial be before a jury. A demand for a jury trial must be filed in writing at least four (4) days before trial. The number and selection of jurors is determined under IC 35-37-1. If a demand for a jury trial is not made, the trial shall be before the court.

Chapter 8. Commitment Procedure; Interagency Agreements; Mistrials

Sec. 1. (a) The court or jury in a trial conducted under IC 35-39-7 shall determine beyond a reasonable doubt whether the respondent is a sexually violent predator. If the determination that the respondent is a sexually violent predator is made by a jury, the jury verdict must be unanimous.

(b) The verdict may be appealed.

Sec. 2. (a) If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to

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the custody of the division of mental health and addiction for control, care, and treatment until the respondent's mental abnormality or personality disorder has changed so that the respondent is safe to be at large.

(b) The control, care, and treatment of a person committed under subsection (a) must be provided at a facility operated by the division of mental health and addiction.

Sec. 3. A person committed under section 2 of this chapter for control, care, and treatment by the division of mental health and addiction under this article must be:

- (1) kept at all times in a secure facility;
- (2) segregated at all times from other patients under the supervision of the division of mental health and addiction; and
- (3) kept in a separate building or facility from any other building or facility housing patients under the supervision of the division of mental health and addiction who have not been committed under this article.

Sec. 4. (a) The division of mental health and addiction may enter into an interagency agreement with the department of correction for the confinement of a person found to be a sexually violent predator under this article.

(b) A person who is in the custody of the department of correction under an interagency agreement executed under this section must be housed and managed separately from offenders in the custody of the department of correction, and except for occasional instances of supervised incidental contact, must be segregated from the offenders.

Sec. 5. (a) After a trial conducted under IC 35-39-7, if a court or jury is not satisfied beyond a reasonable doubt that the respondent at trial is a sexually violent predator, the court shall order the person's release.

(b) Upon a mistrial of a trial held under IC 35-39-7, a court shall order that the respondent be held at an appropriate secure facility, including a county jail, until another trial is conducted.

(c) A subsequent trial following a mistrial under this article must be held not later than ninety (90) days after the previous trial, unless the subsequent trial is continued under IC 35-39-7-1.

Sec. 6. (a) If a person:

- (1) is charged with a sexually violent offense;
- (2) has been found incompetent to stand trial;
- (3) is to be retained under IC 35-36-3; and

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(4) is subject to a commitment proceeding under this chapter; the court shall first conduct a hearing to hear evidence and determine whether the person committed the act or acts charged.

(b) A hearing held under this section must comply with the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and the constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, apply.

(c) After hearing evidence at a hearing held under this section, the court shall make written findings on each of the following:

(1) Whether the person who is the subject of the hearing committed the act or acts charged.

(2) The extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including the effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf.

(3) The extent to which the evidence could be reconstructed without the assistance of the person.

(4) The strength of the prosecution's case.

(d) If after the conclusion of a hearing held under this section, the court finds beyond a reasonable doubt that the person committed the act or acts charged, the court:

(1) shall enter a final order, appealable by the person, on that issue; and

(2) may initiate on its own motion or direct the prosecuting attorney having jurisdiction to initiate a proceeding for a determination of probable cause under IC 35-39-6.

Sec. 7. Upon a finding of probable cause under IC 35-39-6, the matter proceeds to trial as described in IC 35-39-7, and the person named as respondent at the trial is subject to the requirements and entitlements of this article.

Chapter 9. Annual Examinations and Contested Release Petitions

Sec. 1. An examination of the mental condition of each person committed under this article must be made once every year.

Sec. 2. A person committed under this article may retain, or if the person is indigent and so requests, the court may appoint, a qualified expert or professional person to perform the examination required under section 1 of this chapter. The expert or professional person is entitled access to all records concerning the committed person.

Sec. 3. (a) An annual report of the examination required under

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section 1 of this chapter must be provided to the court that committed the person under this article.

(b) The court shall hold a hearing to conduct an annual review of the status of the committed person.

(c) This article does not prohibit the committed person from otherwise petitioning the court for discharge at the annual hearing.

Sec. 4. (a) The division of mental health and addiction shall provide the committed person with an annual written notice of the committed person's right to petition the court for release over the division's objection. The notice must contain a waiver of rights. The division of mental health and addiction shall forward the notice and waiver form to the court with the annual report.

(b) The committed person is entitled to have an attorney represent the committed person at a contested petition hearing, but the committed person is not entitled to be present at the contested petition hearing.

Sec. 5. (a) If the court at a contested petition hearing determines that probable cause exists to believe that the committed person's mental abnormality or personality disorder has changed so that the committed person is safe to be at large and will not engage in acts of sexual violence if discharged, the court shall set a contested release hearing on the issue.

(b) At a contested release hearing scheduled under subsection (a), the committed person is entitled to be present and is entitled to the benefit of the constitutional protections that were afforded the committed person at the committed person's initial commitment proceeding.

Sec. 6. (a) The attorney general shall represent the state at a contested release hearing held under section 5 of this chapter and is entitled to:

(1) a jury trial; and

(2) have the committed person evaluated by a qualified expert or professional person chosen by the state.

(b) The committed person is also entitled to have a qualified expert or professional person evaluate the committed person on the committed person's behalf. The court shall appoint an expert or a professional person if the committed person is indigent and requests the appointment.

Sec. 7. The burden of proof at a contested release hearing held under section 5 of this chapter is on the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the committed person:

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(1) is not safe to be at large; and

(2) if released, is likely to engage in acts of sexual violence.

Chapter 10. Uncontested Petition for Release

Sec. 1. (a) For a person committed to the custody of the division of mental health and addiction under this article, if the division of mental health and addiction determines that the committed person's mental abnormality or personality disorder has changed so that the committed person is not likely to commit predatory acts of sexual violence if released, the division of mental health and addiction shall authorize the committed person to submit an uncontested petition to the court for release.

(b) The uncontested petition for release must be served on the court that heard the initial commitment proceeding under this article and the attorney general.

Sec. 2. (a) The court, upon receipt of an uncontested petition for release filed under section 1 of this chapter, shall order a hearing to be held not later than thirty (30) days after the date of receipt of the uncontested petition for release.

(b) The attorney general shall represent the state at a hearing held under this section. The attorney general is entitled to have the petitioner examined by a qualified expert or professional person of the attorney general's choice.

Sec. 3. (a) A hearing on an uncontested petition for release held under this chapter must be held before a jury if demanded by either the uncontested petitioner or the attorney general.

(b) The burden of proof is on the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner:

(1) is not safe to be at large; and

(2) if released, is likely to engage in acts of sexual violence.

Chapter 11. Subsequent Release Petitions

Sec. 1. This article does not prohibit a committed person from filing an unscheduled petition for release under this article. However, if a committed person has previously filed a contested petition for release and the court determined, either upon review of the petition or following a hearing that the petitioner's:

(1) petition was frivolous; or

(2) condition had not changed so that the committed person would be safe to be at large and would not likely engage in acts of sexual violence;

the court shall deny the subsequent petition unless the petition

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contains facts upon which a court could find the condition of the petitioner had changed so that a hearing is warranted.

Sec. 2. Upon receipt of a first or subsequent petition from a committed person, the court shall endeavor whenever possible to review the petition to determine if the petition is based upon frivolous grounds, and, if so, shall deny the petition without a hearing.

Chapter 12. Costs; Duties; Reimbursement

Sec. 1. The division of mental health and addiction is responsible for all costs relating to the evaluation and treatment of persons committed to the division's custody under this article.

Chapter 13. Notice to Victims Concerning Release of Violent Sexual Predators

Sec. 1. (a) In addition to any other information required to be disclosed under this article, before the release of a respondent committed under this article, the division of mental health and addiction shall give written notice of the respondent's release to a victim of the respondent's activities or crime if the victim is alive and the victim's address is known to the division.

(b) If a victim is deceased, the division of mental health and addiction must give notice under this chapter to the victim's family, if the family's address is known to the division.

(c) Failure to give notices required by this section is not a reason for postponement of release.

Sec. 2. Failure to give notice required by section 1 of this chapter does not create a cause of action against:

(1) the state; or

(2) a state employee acting within the scope of the employee's employment;

as a result of the failure to notify.

Chapter 14. Special Allegation of Sexually Motivated Defendant

Sec. 1. The prosecuting attorney shall file a special allegation of a sexually motivated defendant not later than ten (10) days after an initial hearing in every criminal case other than a sex offense under IC 35-42-4 if sufficient admissible evidence exists that, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective trier of fact that the crime was committed by a person who was sexually motivated to commit the crime.

Sec. 2. (a) In a criminal case in which a special allegation is filed under this chapter, the state must prove beyond a reasonable doubt

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that the defendant was sexually motivated to commit the crime.

(b) For a prosecution in which a special allegation of a sexually motivated defendant is filed under section 1 of this chapter in which the defendant is convicted of the offense:

(1) the court shall make a written finding as to whether the defendant was sexually motivated to commit the crime; or

(2) if there is a jury trial, the jury, if it finds the defendant guilty, shall determine by special verdict whether the defendant was sexually motivated to commit the crime.

The finding or verdict may not be applied to sex offenses under IC 35-42-4.

(c) The prosecuting attorney may not withdraw the special allegation of a sexually motivated defendant without approval of the court through an order of dismissal of the special allegation. The court may not order dismissal of a special allegation unless:

(1) the court finds that the order is necessary to correct an error in the initial charging decision; or

(2) the court determines that there are evidentiary problems that make proving the special allegation doubtful.

Chapter 15. Confidential or Privileged Information and Records

Sec. 1. In order to protect the public, relevant information and records maintained under this article that are otherwise confidential or privileged must be released to an agency or to the attorney general to:

(1) meet the notice requirement in IC 35-39-3; and

(2) determine whether a person is, or continues to be, a sexually violent predator.

Chapter 16. Court Records

Sec. 1. (a) Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, and victim impact statements that are submitted to the court or admitted into evidence under this article are part of the court record.

(b) The court record under this section must be sealed and may be opened only on order of the court.

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